

# CONNELL FOLEY LLP

## ATTORNEYS AT LAW

85 LIVINGSTON AVENUE  
ROSELAND, N.J. 07068-3702  
(973) 535-0500  
FAX: (973) 535-9217

### OTHER OFFICES

HARBORSIDE FINANCIAL  
CENTER  
2510 PLAZA FIVE  
JERSEY CITY, NJ 07311  
(201) 521-1000  
FAX: (201) 521-0100

1500 MARKET STREET  
12TH FLOOR, EAST TOWER  
PHILADELPHIA, PA 19102  
(215) 246-3403  
FAX: (215) 665-5727

THE ATRIUM, SUITE E  
309 MORRIS AVENUE  
SPRING LAKE, NJ 07762  
(732) 449-1440  
FAX: (732) 449-0934

888 SEVENTH AVENUE  
9<sup>TH</sup> FLOOR  
NEW YORK, NY 10106  
(212) 307-3700  
FAX: (212) 262-0050

ONE GREENTREE  
CENTRE  
SUITE 201  
MARLTON, NJ 08053  
(856) 988-5487  
FAX: (856) 596-8359

### COUNSEL

JOHN W. BISSELL  
EUGENE J. CODEY, JR.  
FRANCIS E. SCHILLER\*  
EUGENE P. SQUEO\*  
NOEL D. HUMPHREYS\*  
ANTHONY ROMANO II\*  
STEVE BARNETT\*  
THOMAS M. SCUDERI\*

KARIN I. SPALDING\*  
JODI ANNE HUDSON\*  
RICHARD A. JAGEN  
JOSEPH M. MURPHY\*  
NANCY A. SKIDMORE\*  
JASON E. MARX\*  
ALEXIS E. LAZZARA  
DANIEL B. KESSLER

DOUGLAS J. SHORT\*  
JAMES M. MERENDINO  
MICHELE T. TANTALLA\*  
HECTOR D. RUIZ\*  
ROBERT A. VERDIBELLO\*  
JENNIFER C. CRITCHLEY\*  
PATRICK S. BRANNIGAN\*  
DANIELA R. D'AMICO\*  
CHRISTINE I. GANNON\*  
PHILIP W. ALLOGRAMENTO III\*  
LAURIE B. KACHONICK\*  
ANDREW C. SAYLES\*  
STEPHEN D. KESSLER  
CHRISTOPHER ABATEMARCO\*  
ANTHONY J. CORINO\*  
WILLIAM D. DEVEAU\*  
CONOR F. MURPHY\*  
MEGHAN BARRETT BURKE\*  
RUKHSANAH L. LIGHARI\*  
STACIE L. POWERS\*  
NICOLE B. DORY\*

JOSEPH A. VILLANI, JR.\*  
MICHAEL BOJBASA-  
CHRISTOPHER M.  
HEMRICK\*  
SUSAN KWIATKOWSKI\*  
MONICA SETH\*  
MELISSA D. LOPEZ  
ANDREW L. BARON\*  
JASON D. FALK\*  
JOANNA S. RICH\*  
MEGAN K. MUSSO  
EDMUND J. CAULFIELD\*  
SYDNEY J. DARLING\*  
JESSICA L. PALMER  
NEIL V. SHAH\*  
STEPHEN R. TURANO\*  
TARA L. TOULOU MIS\*  
MICHAEL J. CREEGAN\*  
THOMAS M. BLEWITT,  
JR.+  
BRIAN S. WOLFSON  
SONYA B. COLE  
MOLLY F. HURLEY

JOHN A. PINDAR (1969)  
GEORGE W. CONNELL (2005)  
ADRIAN M. FOLEY, JR.  
GEORGE J. KENNY\*  
KENNETH F. KUNZMAN  
SAMUEL D. LORD  
RICHARD D. CATENACCI  
RICHARD J. BADOLATO\*  
PETER D. MANAHAN  
JOHN B. MURRAY  
MARK L. FLEDER  
KEVIN J. COAKLEY  
THOMAS S. COSMA  
KATHLEEN S. MURPHY  
PATRICK J. MCAULEY  
PETER J. PIZZI\*  
KEVIN R. GARDNER  
ROBERT E. RYAN  
MICHAEL X. MCBRIDE\*  
JEFFREY W. MORYAN  
PETER J. SMITH\*  
WILLIAM P. KRAUSS  
BRIAN G. STELLER  
PHILIP F. MCGOVERN, JR.  
KAREN PAINTER RANDALL  
LIZA M. WALSH  
JOHN P. LACEY  
MICHAEL J. CROWLEY-

TIMOTHY E. CORRISTON\*  
ERNEST W.  
SCHOELLKOPFF\*  
PATRICK J. HUGHES\*\*  
JAMES C. MCCANN\*  
JOHN D. CROMIE  
ANGELA A. IUSO\*  
WILLIAM T. MCGLOIN\*  
BRENDAN JUDGE  
STEPHEN A. URBAN  
CHARLES J. HARRINGTON  
III\*  
STEPHEN V. FALANGA\*  
TRICIA O'REILLY\*  
ANTHONY F. VITIello\*\*  
MARC D. HAEFNER  
JONATHAN P. MCHENRY  
JAMES P. RHATICAN\*\*  
BRAD D. SHALIT\*  
M. TREVOR LYONS\*  
CRAIG S. DEMARESKI\*  
W. NEVINS MCCANN\*  
THOMAS J. O'LEARY\*  
MITCHELL W. TARASCHI  
MICHAEL A. SHADIACK  
OWEN C. MCCARTHY\*  
PATRICIA A. LEE\*\*  
AGNIESZKA ANTONIAN\*  
CHRISTOPHER J. TUCCI+  
NEIL V. MODY\*

\*ALSO ADMITTED IN NEW YORK

+ALSO ADMITTED IN PENNSYLVANIA

-ONLY ADMITTED IN NEW YORK

PLEASE REPLY TO ROSELAND, NJ

November 17, 2011

### VIA E-FILING

The Honorable Claire C. Cecchi  
United States District Judge  
District of New Jersey  
The Rev. Dr. Martin L. King, Jr., Federal Bldg. and Courthouse  
Federal Square  
Newark, New Jersey 07101

**Re: *In re Insurance Brokerage Antitrust Litigation* (MDL 1663),  
Civil Action No. 04-5184**

Dear Judge Cecchi:

This office is counsel to the Ace Defendants and Liaison Counsel to the Non-Settling Defendants. We write on behalf of all the Defendants to respond to the Tag-Along Plaintiffs November 15, 2011 Notice of Subpoena and their letter to Your Honor. (Dkt. ## 1940 and 1933).

Succinctly put, the filing of the Notice of Subpoena underscores the need to stage discovery in this matter in conformity with Your Honor's October 17, 2011 statements on the record. The Tag-Along Plaintiffs, without regard for Your Honor's statements and without regard for the fact that neither of the competing orders on the staging of discovery has been

The Honorable Claire C. Cecchi, U.S.D.J.

November 17, 2011

Page 2 of 3

executed, are simply moving forward at their own pace. Your Honor set forth a clear case management plan during the conference on October 17, 2011. Yet since then, Tag-Along Plaintiff Signum has filed a default in violation of common sense, New Jersey practice, and Your Honor's specific directions on the October 17, 2011 conference call. (Dkt. # 1928). Now, Tag-Along Plaintiff New Cingular has served the subpoena identified in the Notice of Subpoena. (Dkt. # 1940). Both initiatives are in violation of Your Honor's instructions, and both serve to frustrate Your Honor's goals of an orderly discovery process. New Cingular's subpoenas are particularly troubling because New Cingular was involved in discovery when it was proceeding in the MDL action. New Cingular, with complete disregard for the orders currently in place that govern discovery, wishes to simply "start over." Its purpose is obvious: despite having received voluminous discovery concerning its own placements, it lacks sufficient factual basis for its own complaint (which it says it plans to amend) and so it is effectively seeking pre-complaint discovery concerning an unrelated policyholder's placements as part of a fishing expedition in anticipation of its amendment.

The Tag-Along Plaintiffs through their actions and their proposed scheduling order seek to reverse years of prior scheduling orders in hopes of pressing full-scale discovery forward in each and every Tag-Along case even while motions to dismiss are pending. The Tag-Along Plaintiffs' actions also ignore the reasoning of Judge Hochberg and Magistrate Judge Shwartz in determining a "once and for all" discovery plan in Order No. 9 specifically designed with the goal of fairness to later-added Tag-Along actions (Oct. 4, 2006 Hr'g Tr. at 10, 18-19), and it would ignore the teachings of *Twombly* that guided Your Honor's oral decision that discovery could proceed in a staged fashion under the guidance of Magistrate Judge Shwartz. Indeed, Magistrate Judge Shwartz worked closely with the Court in devising the plan for discovery in the Tag-Along actions set forth in Order No. 9 that certain plaintiffs now seek to vacate. (Oct. 4, 2006 Hr'g Tr. at 10 ("My plan is to listen to you as to what the main sticking points are, review your various submissions . . . and with Magistrate Judge Shwartz issue a once and for all discovery schedule.")).

To bring order to this process, we respectfully ask that the Court enter the proposed scheduling order offered by the Defendants on October 31, 2011. That order fully captures the Court's concern that discovery proceed in a staged and efficient fashion, even while motions to dismiss are filed and resolved. (Dkt. # 1932).

Should Your Honor have any questions or desire anything additional, we will be available at Your Honor's convenience.

Respectfully submitted,

*s/Marc D. Haefner*

Marc D. Haefner

The Honorable Claire C. Cecchi, U.S.D.J.

November 17, 2011

Page 3 of 3

cc: Magistrate Judge Shwartz (via Lawyer's Service)  
All Counsel of Record (via E-filing and Email)